

EXHIBIT A

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22 UNITED STATES DISTRICT COURT

23 FOR THE CENTRAL DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,
25 Plaintiff,
26 v.
27 LACEY, ET AL.,
28 Defendants.

No. CR 18-422-PHX-SPL (BSB)
MOTION FOR LEAVE TO LATE FILE
REPLY ON DEFENDANT JAMES LARKIN'S
OPPOSITION IN RESPONSE TO UNITED
STATES' APPLICATION FOR ORDER
REGARDING CRIMINAL FORFEITURE OF
PROPERTY IN GOVERNMENT CUSTODY
(First Request)

1 Plaintiff United States of America, by and through its counsel
2 of record, the United States Attorney Office for the District of
3 Arizona and Special Assistant United States Attorney John J. Kucera,
4 respectfully moves this Court for an order granting leave to late
5 file their Reply on Defendant James Larkin's Opposition in Response
6 to United States' Application for Order Regarding Criminal Forfeiture
7 of Property in Government Custody.

8 Plaintiff's Reply on James Larkin's Opposition to Response to
9 United States' Application for Order Regarding Criminal Forfeiture of
10 Property in Government Custody is being filed late due to the press
11 of other business that counsel has been addressing in this matter and
12 others, including but not limited to the preparation of civil
13 complaints. Defendants' counsel has advised that they oppose this
14 motion.

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For the above reasons, the government respectfully moves for leave to late file this Reply on Defendant James Larkin's Opposition in Response to United States' Application for order Regarding Criminal Forfeiture of Property in Government Custody.

Dated: September 12, 2018 Respectfully submitted,

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27 IN THE UNITED STATES DISTRICT COURT

28 FOR THE DISTRICT OF ARIZONA

22 United States of America,
23 Plaintiff,

24 v.

25 Michael Lacey, et al.,

26 Defendant(s).

CR 18-422-PHX-SPL (BSB)

REPLY TO OPPOSITION TO
GOVERNMENT'S APPLICATION FOR
ORDER REGARDING CRIMINAL
FORFEITURE OF PROPERTY IN
GOVERNMENT CUSTODY

1 Plaintiff United States of America (the "government"), by
2 and through its counsel of record, the United States Attorney's
3 Office for the District of Arizona and Special Assistant United
4 States Attorney John J. Kucera, hereby submits its reply to
5 Michael Lacey's, joined by James Larkin, John Brunst, and Scott
6 Spear (collectively "defendants"), Opposition To The
7 Government's Application For An Order Regarding Criminal
8 Forfeiture Of Property Already In The Government's Custody (the
9 "Opposition"). In support of its motion, the Government states
10 as follows.

11 **I. PROCEDURAL HISTORY**

12 On March 28, April 9, April 26, and June 24, 2018, for the
13 purpose of initiating forfeiture proceedings, the government
14 executed civil seizure warrants issued by three separate United
15 States Magistrate Judges in the Central District of California.
16 Pursuant to the arrest warrants, the United States seized all
17 right, title, and interest in certain assets (the "seized
18 assets"). Thereafter, on March 28, 2018, the government
19 included several of these assets in its Indictment (CR 18-422-
20 PHX-SPL (BSB), Dkt. #3). Subsequently, on July 25, 2018, in its
21 Superseding Indictment (CR 18-422-PHX-SPL (BSB), Dkt #230) and,
22 on August 24, 2018, in the First Bill of Particulars (CR 18-422-
23 PHX-SPL (BSB), Dkt. 281), the government included for criminal
24 forfeiture each of the seized assets.

25 On August 1, 2018, in the Central District of California,
26 defendants moved to vacate the government's civil seizure of
27 illicit proceeds arising from alleged illegal activities
28

1 involving money laundering, prostitution, and obscenity
2 violations.

3 On August 27, 2018, in the District of Arizona, the
4 government filed its Application for an Order Regarding Criminal
5 Forfeiture of Property in Government Custody. See Dkt. 282.
6 Thereafter, on August 29, 2018, defendants filed their
7 Opposition. See Dkt. 285.

8 In their Opposition, defendants' primary argument is that
9 the government is engaged in forum shopping by applying in the
10 District of Arizona for an order allowing the Government to
11 maintain custody of property already in the Government's
12 possession pending the resolution of the criminal matter in the
13 District of Arizona. Specifically, defendants suggest that the
14 government is avoiding the September 24, 2018, hearing in the
15 Central District of California before the Honorable R. Gary
16 Klausner, by submitting this motion in this District. By doing
17 so, defendants incorrectly allege that the government's motion
18 is "an obvious effort to pull the issues from Judge Klausner and
19 move them [to this District]." Dkt. 285 at 3. Defendants'
20 accusation is false and fails to account for the fact that two
21 different matters, one criminal and one civil, involve the same
22 individuals and assets, and the fact that the government is
23 entitled simultaneously to proceed against these same assets
24 both criminally and civilly, or either one without the other.

25 **II. ARGUMENT**

26 A. The Government May Apply for an Order Regarding
27 Criminal Forfeiture of Property In Government Custody
28 Because Venue Is Proper In This District

1 Title 18 U.S.C. § 1355(b) (1) permits the government to
2 initiate a civil forfeiture action in the Central District of
3 California because such actions may be brought in "the district
4 court for the district in which *any* of the acts of omissions
5 giving rise to the forfeiture occurred." 18 U.S.C. §
6 1355(b) (1) (A) (emphasis added). Section 1355 has a broad
7 application, establishing venue so long as "at least one of the
8 acts or omissions giving rise to the [forfeiture] action
9 occurred" in the district where the action is brought. *United*
10 *States v. One Oil Painting*, 362 F. Supp. 2d 1175, 1186 (C.D.
11 Cal. 2005); see also *United States v. Hartog*, 513 F.3d 991, 998
12 (9th Cir. 2008) ("Where an act or omission giving rise to the
13 forfeiture occurs in a district, the corresponding district
14 possesses jurisdiction over the forfeiture action regardless of
15 its control over the res."). In using the term "any," Congress
16 chose language that is deliberately "broad" and "expansive" in
17 its scope. See generally *Ali v. BOP*, 552 U.S. 214, 219 (2008)
18 (finding that when Congress uses the word "any" to modify a noun
19 in a statute, it intends the language to have a "broad" and
20 "expansive" scope).

21 The facts alleged in the indictment outline multiple
22 allegations, including forfeiture based on money laundering
23 statutes and facilitation of prostitution, which statutes
24 provide for the forfeiture of assets involved in or traceable to
25 the proceeds of these enumerated criminal acts. Numerous acts
26 in connection with the illegal proceeds are alleged to have
27 occurred in the District of Arizona, including conspiracy in
28 violation of the Travel Act (18 U.S.C. § 1952(a) (3) (A)) (Dkt.

1 #230 at ¶¶195-96.), facilitating prostitution (Dkt. #230 at
2 ¶¶200-01.), conspiracy to commit money laundering (Dkt. #230 at
3 ¶¶202-03.), money laundering concealment (Dkt. #230 at ¶¶204-
4 05.), promoting international money laundering (Dkt. #230 at ¶¶206-07.), transactional money laundering (Dkt. #230 at ¶¶208-
5 09.), and concealing international money laundering (Dkt. #230
6 at ¶¶210-11.). Likewise, these illegal activities have a direct
7 nexus to the Central District of California.

8 Defendants' argument that the government is engaged in
9 "forum shopping" completely ignores the extensive and detailed
10 allegations set forth in the indictment. As explained above,
11 the indictment very specifically and in detail alleges multiple
12 acts in this District in furtherance of the conspiracy, which is
13 the underlying basis for the forfeiture of the defendant assets.
14

15 Defendants also ignore the fact that where there is an
16 indictment, the government need not pursue a forfeiture
17 complaint civilly, but, instead, may proceed by criminal
18 forfeiture alone if it elects.¹ As such, this Court has full

19 ¹ The government may elect to pursue civil forfeiture,
20 criminal forfeiture, or both mechanisms to forfeit the same
21 property traceable to the same criminal act(s). See 18 U.S.C.
22 §§ 981(a)(1)(A), 982(a)(1); *United States v. One 1978 Piper*
23 *Cherokee Aircraft*, 91 F.3d 1204, 1209-10 (9th Cir. 1996); *United*
24 *States v. Candelaria-Silva*, 166 F.3d 19, 43 (1st Cir. 1999);
25 *United States v. Cunan*, 156 F.3d 110, 117 (1st Cir. 1998) ("The
26 United States Code specifically contemplates the possibility of
27 duplicative forfeiture proceedings . . ."). Cf. *United States v.*
28 *One 1985 Mercedes-Benz*, 300 SD, VIN WDBCB20C6FA177831, 14 F.3d
465, 467 (9th Cir. 1994) ("Congress allowed for both the civil
forfeiture, under 18 U.S.C. § 981 . . . , and the criminal
forfeiture, under 18 U.S.C. § 982, of 'property involved' in
violations of reporting requirements included in other sections
of Title 31."). This is so because, as the Ninth Circuit
pointed out above, "criminal and civil forfeiture actions are .
. . based on different legal principles . . . [C]riminal

1 statutory authority to consider this motion and issue an order
2 allowing the government to maintain custody of property already
3 in the government's possession pending the resolution of this
4 criminal matter.² Moreover, the government is not interfering
5 with the authority and jurisdiction of another district court
6 given that statutory authority contemplated such concurrent
7 proceedings and authorizes the government to pursue both matters
8 concurrently.

9 As such, defendants' "forum shopping" argument is
10 unavailing and lacks merit, and defendants remain free to seek
11 any relief they deem appropriate in this District.

12 B. The Government Is Justified In Maintaining The Assets
13 Notwithstanding that the Department of Justice's Policy
14 Manual creates no substantive rights, defendants site to the
15 Manuel for the proposition that the government may only seek a

16 forfeiture actions are *in personam* proceedings against the
17 defendant By contrast, civil forfeiture actions are *in
18 rem* proceedings against specific pieces of property." *United
19 States v. \$20,193.39 U.S. Currency*, 16 F.3d 344, 347 (9th Cir.
1994).

20 ² Title 21 U.S.C. § 853(a)(1) subjects property "constituting,
21 or derived from, any proceeds the [defendants] obtained, directly
22 or indirectly" to criminal forfeiture provided that said
23 defendants are "convicted of a violation of this subchapter."
24 Section 853(a)(1) also allows this District to "enter a
25 restraining order or injunction" pursuant to 21 U.S.C. § 853(e).
Likewise, the Supreme Court has recognized that 21 U.S.C. §
26 853(c) "reflects the application of the long-recognized and
27 lawful practice of vesting title to any forfeitable assets, in
the United States, at the time of the criminal act giving rise to
28 forfeiture." *Caplin & Drysdale, Chartered v. United States*, 491
U.S. 617, 627 (1989); see also *United States v. Monsanto*, 491
U.S. 600, 613 (1989) ("We cannot believe that Congress intended
to permit the effectiveness of the powerful 'relation-back'
provision of § 853(c) ... to be nullified by any other
construction of the statute."). Here, this standard is satisfied
by the indictment's specification of multiple acts in furtherance
of the conspiracy that occurred in this District.

1 protective order pursuant to Section 853(e) (1) when the
2 government has already obtained lawful custody. Opposition, p.
3 4. Not only do defendants' arguments on this point appeal to no
4 binding authority upon either the government or this Court,
5 their arguments are internally inconsistent in that they ignore
6 that portion of the Manual that contradicts their argument. In
7 pertinent part, the Manual states, "[I]t is perfectly
8 appropriate for the Government to maintain possession of such
9 property prior to the entry of a preliminary order of forfeiture
10 as long as [the Government] has a valid basis for holding the
11 property." Department of Justice, *Policy Manual: Asset*
12 *Forfeiture Policy Manual* (2016) (available at
13 <https://www.justice.gov/criminal-afmls/file/839521/download>),
14 Chap. 1, Sec.III.C (at page 34) (the "Manual").

15 The government is well within its rights to seek custody
16 and control of the property pursuant to a court order, whether
17 it be through an injunction or similar remedy. Where "the
18 property with respect to which the order is sought would, in the
19 event of conviction, be subject to forfeiture under this
20 section." 21 U.S.C. § 853(e)(1); see also 21 U.S.C. § 853(f).
21 This statute also allows this Court to "take any other action to
22 preserve the availability of the property ... for forfeiture ...
23 ." *Id.* Moreover, as evidenced by the allegations set forth in
24 the indictment, the government has shown a clear basis for
25 maintaining possession and control of the property pending the
26 resolution of this criminal matter.

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3 WHEREFORE, pursuant to section 853(e) (1), the United States
4 respectfully moves this Court to issue an Order directing the
5 United States to maintain custody of the seized assets described
6 above through the conclusion of the pending criminal case, and
7 stating that such Order satisfies the requirements of 18 U.S.C.
8 § 983(a) (3)(B) (ii) (II).
9

10 DATED: September 12, 2018

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UNITED STATES DISTRICT COURT

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FOR THE CENTRAL DISTRICT OF CALIFORNIA

10

UNITED STATES OF AMERICA,

11

Plaintiff,

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v.

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LACEY, ET AL.,

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Defendants.

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16

No. CR 18-422-PHX-SPL (BSB)

ORDER GRANTING LEAVE TO LATE FILE
REPLY ON DEFENDANT JAMES LARKIN'S
OPPOSITION IN RESPONSE TO UNITED
STATES' APPLICATION FOR ORDER
REGARDING CRIMINAL FORFEITURE OF
PROPERTY IN GOVERNMENT CUSTODY
(First Request)

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Having considered Plaintiff's Motion for Leave to Late File Reply on Defendant James Larkin's Opposition in Response to United States' Application for Order Regarding Criminal Forfeiture of Property in Government Custody (First Request), and good cause appearing:

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IT IS HEREBY ORDERED that the Motion is **GRANTED**.

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DATED this _____ day of _____, 20 ____.

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HON. STEVEN P. LOGAN
UNITED STATES DISTRICT JUDGE